

converted into money orders made payable to the Treasurer of the United States. The money order receipts will remain attached to the money orders. Form FmHA or its successor agency under Public Law 103-354 451-1 will not be issued in any such case. The debtor will be informed in writing by the County Supervisor of the disposition of the amount received.

(3) When the U.S. Attorney has returned a judgment case to FmHA or its successor agency under Public Law 103-354, the County Supervisor is responsible for servicing it as follows:

(i) When the judgment debtor has the ability to make periodic payments, action will be taken by the County Supervisor to make arrangements for the judgment debtor to do so.

(ii) Any payments received from such debtor by FmHA or its successor agency under Public Law 103-354 will be handled by issuing Form FmHA or its successor agency under Public Law 103-354 451-1 and converting and transmitting such payments as provided in Subpart B of Part 1951 of this chapter. The U.S. Attorney will be informed through OGC of payments received only when the debtor pays a judgment in full.

(iii) At the time of the annual review of collection-only or delinquent and problem cases, the County Supervisor will determine whether such judgment debtors, whose judgments have not been charged off and who are not making regular and satisfactory payments, have assets or income from which the judgment can be collected. If such debtors have either assets or income from which collection can be made and they have declined to make satisfactory arrangements for payment, the facts will be reported by the County Supervisor to the State Director. The State Director will notify OGC of developments when it appears that collections can be enforced out of income or assets.

(iv) Such judgments will not be renewed or revived unless there is a reason to believe that substantial assets have or may become subject thereto.

(v) Such judgments may be released only by the U.S. Attorney when they are paid in full or compromised.

(4) In all judgment cases, any proposed compromise or adjustment will

be handled in accordance with Subpart B of Part 1956 of this chapter.

(5) If the debtor requests information as to the amount of outstanding indebtedness, such information, including court costs, should be obtained from the Finance Office if the County Supervisor does not have that information. If questions arise as to the payment of court costs, information as to such costs will be obtained through the State Office from OGC.

[50 FR 45783, Nov. 1, 1985, as amended at 51 FR 45439, Dec. 18, 1986; 53 FR 35787, Sept. 14, 1988; 54 FR 42799, Oct. 18, 1989; 55 FR 35296, Aug. 29, 1990; 57 FR 60085, Dec. 18, 1992]

§ 1962.50 [Reserved]

EXHIBITS TO SUBPART A

EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN COMMODITY CREDIT CORPORATION AND FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354

IT IS HEREBY AGREED by and between the Farmers Home Administration or its successor agency under Public Law 103-354 (hereinafter referred to as "FHA") and the Commodity Credit Corporation (hereinafter referred to as "CCC") that the following procedure will be observed in those cases where producers sell to CCC or pledge to CCC as loan collateral under the Price Support Program, agricultural commodities such as, but not limited to, cotton, tobacco, peanuts, rice, soybeans, grains, on which FHA holds a prior lien and the proceeds from such sales or loans are not remitted to FHA for application against the loan(s) secured by such lien:

1. When an FHA County Supervisor learns that an FHA borrower has obtained a loan from CCC on a commodity or sold a commodity to CCC under such circumstances, he shall immediately notify his State Director. The State Director, immediately upon receipt of the notice, shall furnish CCC (see Appendix 1) with the name and address of such borrower, the county of his location at the time the commodity was placed under loan or sold, and the amount of the FHA loan secured by the lien.

2. When CCC receives such a notice from FHA, CCC shall take steps to prevent the making of any further loans on or purchases of the commodity of the borrower. If the CCC loan is still outstanding and CCC calls the loan, CCC shall notify the FHA State director of the demand.

3. If the CCC loan is repaid, whether prior to or after the receipt by CCC of the notice

from FHA, the FHA State Director shall be notified immediately, at which time CCC will have discharged its responsibility under this agreement.

4. FHA shall, in each case in which the CCC loan is not repaid or the commodity has been sold to CCC, endeavor to collect from the borrower the amount due on the FHA loan. Such collection efforts shall include the making of demand on the borrower and the following of FHA's normal administrative policies with respect to the collection of debts, but shall not include the making of demand for payment upon the area peanut producer cooperative marketing associations through which CCC makes price support available to producers. If collection efforts are not successful, the FHA County Supervisor shall make a complete report on the matter to his State Director. If the State Director determines that the amount due on the FHA lien is not collectable by administrative action, he shall refer the matter to the appropriate local office of the General Counsel, with a full statement of the facts, for a determination of the validity of the FHA lien. If it is determined by the General Counsel's Office that FHA holds a valid prior lien on the commodity, the State Director shall furnish CCC with a copy of such determination, together with all other pertinent information, and shall request payment to FHA of the lesser of (1) the amount due on its loan, or (2) the value of the commodity at the time the CCC loan or purchase was made (based on the market value of the commodity on the local market nearest to the place where the commodity was stored). The information to be furnished CCC shall include (a) the principal balance plus interest due FHA on the date of the request, (b) the amount due on the FHA loan at the time the CCC loan or purchase was made, and (c) the amount of the CCC loan or purchase proceeds, if any, applied by the producer against the FHA loan. FHA shall continue to make collection efforts and shall notify CCC of any amount collected from the producer or any other party.

5. Upon receipt of evidence, including a copy of the determination of the Office of the General Counsel, from the State Director of FHA that the proceeds from the CCC loan or purchase have not been received by FHA from the borrower, and that collection cannot be made by FHA, CCC will if the CCC loan has not been repaid or if CCC has purchased the commodity, pay FHA the amount specified in paragraph 4 above or deliver the commodity (or warehouse receipts representing the commodity) to FHA: *Provided*, That if CCC has any information indicating that collection may be made by FHA from the borrower or any other party, it may notify FHA and delay payment pending additional collection efforts by FHA.

6. It is the desire of both FHA and CCC that claims to be processed under this agreement receive prompt attention by both parties and be disposed of as soon as possible. Instructions for the implementation of these procedures at the field office level will be developed and issued by the Washington offices of FHA and CCC.

7. Any question with regard to the handling of any claim hereunder shall be reported by the applicable ASCS office to ASCS in Washington and by the FHA State Director to the National Office of FHA.

This Memorandum of Understanding supersedes the agreement entered into between FmHA or its successor agency under Public Law 103-354 and CCC on November 5, 1951.

Entered into as of this 29th day of May, 1973.

FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354,

FRANK B. ELLIOTT,
Acting Administrator.

COMMODITY CREDIT CORPORATION,

KENNETH E. FRICK,
Executive-Vice President.

APPENDIX 1—FURNISHING NOTICE OR INFORMATION TO COMMODITY CREDIT CORPORATION

| Commodity | Direct to |
|-----------------------------|--|
| Cotton | Prairie Village, Kansas, ASCS Commodity Office. |
| Tobacco | Applicable tobacco association. |
| Peanuts | Applicable peanut association. |
| All other commodities | Applicable State ASCS office. |

[44 FR 4437, Jan. 22, 1979]

EXHIBIT B—MEMORANDUM OF UNDERSTANDING AND BLANKET COMMODITY LIEN WAIVER

The Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) sometimes makes loans to farmers on the security of agricultural commodities that are eligible for price support under loan and purchase programs conducted by the Commodity Credit Corporation (CCC). FmHA or its successor agency under Public Law 103-354 and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective security interests of FmHA or its successor agency under Public Law 103-354 and CCC in and without undue inconvenience to producers and FmHA or its successor agency under Public Law 103-354 and CCC in securing lien waivers on such commodities.

Now, therefore, it is agreed as follows:

(1) Upon request of an official of a State ASCS office, the FmHA or its successor

agency under Public Law 103-354 State Director in such State shall furnish designated county ASCS offices with the names of producers in the trade area from whom FmHA or its successor agency under Public Law 103-354 holds currently effective liens on commodities with respect to which CCC conducts price support programs. FmHA or its successor agency under Public Law 103-354 will try to furnish a complete and current list of the names of such producers; however, FmHA or its successor agency under Public Law 103-354's liens with respect to any commodity will not be affected by an error in or omission from such lists.

(2) For a loan disbursed by a county ASCS office, CCC will issue a draft in the amount (less fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity payable jointly to FmHA or its successor agency under Public Law 103-354 and the producer if (a) his name is on the list furnished by FmHA or its successor agency under Public Law 103-354, or (b) he names FmHA or its successor agency under Public Law 103-354 as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(3) On issuance of the draft, the security interest of FmHA or its successor agency under Public Law 103-354 shall be subordinated to the rights of CCC in the commodity with respect to which the loan or purchase is made. The word "subordinated" means that, in the case of a loan, CCC's security interest in the commodity shall be superior and prior in right to that of FmHA or its successor agency under Public Law 103-354 and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, the security interest of FmHA or its successor agency under Public Law 103-354 in such commodity shall terminate.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days' written notice to the other party.

Dated: July 20, 1980.

RAY V. FITZGERALD,
Executive Vice President. CCC.

Dated: July 14, 1980.

GORDON CAVANAUGH,
*Administrator, FmHA or its successor agency
under Public Law 103-354.*

[53 FR 35787, Sept. 14, 1988]

EXHIBIT C—MEMORANDUM OF UNDER-
STANDING BETWEEN FARMERS HOME
ADMINISTRATION OR ITS SUCCESSOR
AGENCY UNDER PUBLIC LAW 103-354
AND COMMODITY CREDIT CORPORATION

Rotation of Grain Crops

Under the Commodity Credit Corporation (CCC) Farmer-Owned Grain Reserve Program, a producer may request to rotate or exchange new crop grain for the original crop grain that is in the Farmer-Owned Grain Reserve Program and already encumbered by CCC. The Farmers Home Administration or its successor agency under Public Law 103-354 (FmHA or its successor agency under Public Law 103-354) may have subordinated their first lien position to CCC on the original grain placed in reserve and/or may have a first lien on the new crop. FmHA or its successor agency under Public Law 103-354 and CCC desire to devise a mechanism whereby the CCC can relinquish its first lien position on the original grain reserve crop to FmHA or its successor agency under Public Law 103-354 and in turn the FmHA or its successor agency under Public Law 103-354 can relinquish its first lien position to CCC on the replacement grain reserve crop.

Now, therefore, it is agreed as follows:

(1) Upon receipt of a memorandum from an Agricultural Stabilization and Conservation Service (ASCS) County Executive Director or other designated county office official requesting the rotation of a grain reserve crop for a producer borrower(s), the FmHA or its successor agency under Public Law 103-354 County Supervisor and the ASCS county office official will jointly indicate approval or rejection of the request on the bottom of the original and a copy of the memorandum (Approval Memorandum) as follows:

"We hereby agree to and authorize the rotation of the subject producer's grain crops in accordance with the provisions of the Memorandum of Understanding between Farmers Home Administration or its successor agency under Public Law 103-354 and Commodity Credit Corporation dated _____."

FmHA or its successor agency under Public Law 103-354 _____
ASCS _____

In the memorandum, ASCS will include the name(s) of the producer(s) desiring to rotate the grain crops, the approximate number of bushels being rotated, the type of crop, years' crop being rotated and the location of the original grain reserve crop (approximate land and facility description).

(2) Upon execution of the Approval Memorandum by both ASCS and FmHA or its successor agency under Public Law 103-354, the security interest of FmHA or its successor agency under Public Law 103-354 in the new crop grain shall be subordinated to the security interest of CCC in such grain and the security interest of CCC in the original crop grain shall be subordinated to the security interest of FmHA or its successor agency under Public Law 103-354 in such grain. At that point in time it will be the responsibility of each agency and the borrower to account for their respective interests in the grain crops and/or proceeds from the sale of the grain. The crop rotation and subordination of liens will only involve the amount of grain that has been specifically provided for in the memorandum from ASCS.

(3) If there is an intervening third party lien and it is impossible for FmHA or its successor agency under Public Law 103-354 or CCC to have a first lien on their respective grain crops, the request of the producer to rotate crops will not be granted.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days written notice to the other party.

[44 FR 4437, Jan. 22, 1979]

EXHIBITS D AND D-1 [RESERVED]

EXHIBIT E—RELEASING SECURITY SALES PROCEEDS AND DETERMINING “ESSENTIAL” FAMILY LIVING AND FARM OPERATING EXPENSES

Family Living Expenses

Expenses for household operating, food, clothing, medical care, house repair, transportation, insurance and household appliances, i.e., stove, refrigerator, etc., are essential family living expenses. We do not expect there will be any disagreements over this. However, when proceeds are less than expenses, there might be disagreements about the amounts FmHA or its successor agency under Public Law 103-354 should release to pay for particular items within these broad categories. For example, FmHA or its successor agency under Public Law 103-354 has to release for transportation expenses, but should FmHA or its successor agency under Public Law 103-354 release so that a borrower can buy a new car? If at planning time or during the crop year it appears that there will be sales proceeds available to pay for the borrower's operating and living expenses, including the expense of a new car, the Form FmHA or its successor agency under Public Law 103-354 1962-1 can be completed to show that FmHA or its suc-

cessor agency under Public Law 103-354 plans to release for a new car. On the other hand, it would also be proper to complete the Form FmHA or its successor agency under Public Law 103-354 1962-1 to release for a used car or for gas and repairs to the borrower's present car. Since it is necessary for FmHA or its successor agency under Public Law 103-354 to release for essential family living expenses and because transportation is an essential family living expense, some proceeds must be released for transportation. However, nothing requires FmHA or its successor agency under Public Law 103-354 to release for a specific expense; usually, there will be several ways to use proceeds to provide for essential family living expenses. We must provide the borrower with a written decision and an opportunity to appeal whenever there is a disagreement over the use of proceeds or whenever we reject a request for a release.

Farm Operating Expenses

We would expect farm operating expenses to present more of a problem than family living expenses. There will probably be a few disagreements over whether an expense is an operating expense (as opposed to a capital expense), but it is more likely that there will be disagreements over the amount FmHA or its successor agency under Public Law 103-354 should release for operating expenses and whether a particular farm operating expense is “essential.” As is the case with family living expenses, disagreements will most likely arise when proceeds are less than expenses.

To resolve disputes over the amount to be released, remember that we must be reasonable and release enough to pay for essential farm operating expenses. Although a borrower might not always agree that enough money is being released, if the borrower's essential farm operating expenses are being paid, we are fulfilling the requirements of the statute. We must provide the borrower with an opportunity to appeal when there is a disagreement over the use of proceeds or when we reject a request for a release.

Section 1962.17 of this subpart states that essential expenses are those which are “basic, crucial or indispensable.” Whether an expense is basic, crucial or indispensable depends on the circumstances. For example, feed is a farm operating expense, but it is not always an essential expense. If adequate pasture is available to meet the needs of the borrower's animals, feed is not essential. Feed is essential if animals are confined in lots. Hiring a custom harvester is a farm operating expense, but is not an essential expense if the farmer has the equipment and labor to harvest the crop just as well as a custom harvester. Hired labor is an operating expense which might be essential in a dairy operation but not in a beef cattle operation. Payments to creditors are essential if

the creditor is unable to restructure the debt or to carry the debt delinquent. Renting land is not essential if the borrower plans to use it to grow corn which can be purchased for less than the cost of production. Paying outstanding bills is essential if a supplier is refusing to provide additional credit but not if the supplier is willing to carry a balance due. Of course, the long term goal of any farming operation is to pay all of its expenses, but when this is not possible, FmHA or its successor agency under Public Law 103-354 and the borrower must work together to decide which farm operating expenses are essential and demand immediate attention and cannot be neglected. These are the essential expenses.

We absolutely must release to pay for essential family living and farm operating expenses; there are no exceptions to this. When deciding whether an expense is essential and when deciding how much to release, the choices we make must be rational, reasonable, fair and not extreme. They must be based on sound judgment, supported by facts, and explained to the borrower. Following these rules will help us avoid disagreements with borrowers.

[56 FR 15829, Apr. 18, 1991]

EXHIBIT F OF SUBPART A [RESERVED]

PART 1965—REAL PROPERTY

Subpart A—Servicing of Real Estate Security For Farm Loan Programs Loans and Certain Note-Only Cases

Sec.

- 1965.1 Purpose.
- 1965.2 General policies.
- 1965.3 Borrower's responsibilities.
- 1965.4 FmHA or its successor agency under Public Law 103-354's responsibility.
- 1965.5 Servicing certain insured Farm Ownership (FO) loans.
- 1965.6 Consent of lienholders.
- 1965.7 Definitions.
- 1965.8—1965.10 [Reserved]
- 1965.11 Preservation of security and protection of liens.
- 1965.12 Subordination of an Agency mortgage.
- 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.
- 1965.14 Subordination of FmHA or its successor agency under Public Law 103-354 real estate mortgages to easements to the U.S. Fish and Wildlife Service (formerly the Bureau of Sport Fisheries and Wildlife).
- 1965.15 Subordination of FmHA or its successor agency under Public Law 103-354's lien to the Commodity Credit Corpora-

tion's (CCC) security interest taken for loans made for farm storage and drying equipment.

- 1965.16 Consent to junior liens.
 - 1965.17 Lease of security.
 - 1965.18 Transfer of upland cotton, peanut, or tobacco allotments.
 - 1965.19 Severance agreement.
 - 1965.20 [Reserved]
 - 1965.21 Assignment and release of Soil Conservation or similar program payments.
 - 1965.22 Deceased borrower.
 - 1965.23 Bankruptcy and insolvency.
 - 1965.24 Servicing note-only cases.
 - 1965.25 Release of FmHA or its successor agency under Public Law 103-354 mortgage without monetary consideration in certain cases.
 - 1965.26 Liquidation action.
 - 1965.27 Transfer of real estate security.
 - 1965.28—1965.30 [Reserved]
 - 1965.31 Taking liens on real estate as additional security in servicing FmHA or its successor agency under Public Law 103-354 loans.
 - 1965.32 [Reserved]
 - 1965.33 Cosigners—SFH loans.
 - 1965.34 [Reserved]
 - 1965.35 Exception authority.
 - 1965.36 State Supplements and reference to the OGC.
 - 1965.37 Redlegation of authority.
 - 1965.38—1965.49 [Reserved]
 - 1965.50 OMB control number.
- EXHIBITS TO SUBPART A
- EXHIBIT A—MEMORANDUM OF UNDERSTANDING BETWEEN BUREAU OF SPORT FISHERIES AND WILDLIFE AND THE FARMERS HOME ADMINISTRATION OR ITS SUCCESSOR AGENCY UNDER PUBLIC LAW 103-354 [NOTE]
- EXHIBIT B—NOTIFICATION OF OTHER LIENHOLDERS INTENT TO FORECLOSE [NOTE]
- EXHIBIT C—PROCESSING GUIDE [NOTE]
- EXHIBIT D—EQUITY RECAPTURE AGREEMENT [NOTE]

Subpart B—Security Servicing for Multiple Housing Loans

- 1965.51 General.
- 1965.52 Definitions.
- 1965.53—1965.54 [Reserved]
- 1965.55 Authority of State Director.
- 1965.56—1965.57 [Reserved]
- 1965.58 Responsibilities.
- 1965.59—1965.60 [Reserved]
- 1965.61 General loan servicing requirements.
- 1965.62 [Reserved]
- 1965.63 Issuance or transfer of stock, or change in membership, or membership interests in organizations indebted to FmHA or its successor agency under Public Law 103-354.
- 1965.64 [Reserved]
- 1965.65 Transfer of real estate security and assumption of loans.